very little, once the contract was terminated because they could not make use of the chipping plants which belonged to appellants. As long as there was demand for wood chips there would be no problem. But, when market condition was bad and demand was lacking respondents were actually at the mercy of appellants. Taking all the factors into consideration it is not unfair to reduce the amount of $948,745.14 by $250,000. Respondents are, therefore, entitled to $698,745.14.

The appeal is allowed with half the costs and the cross-appeal is dismissed with no order as to costs. Deposit to be refunded to appellants. The balance in court to be paid to respondents.

Order accordingly.

Solicitors: *Skrine & Co.; Dato S.M. Yong & Co.*

SIM SIOK ENG & ANOR. v. POH HUA TRANSPORT AND CONTRACTOR SDN. BHD.

[F.C. (Chang Min Tat F.J., Salleh Abas F.J. & Charles Ho J.) September 3, 1979 & February 29, 1980]

[Kuching — Federal Court Civil Appeal No. 10 of 1979]

Contract — Sale of Goods — Claim for price of goods — Evidence of account book regularly kept in the course of business — Evidence Act, 1950, s. 34.

Evidence — Sale of goods — Claim for price — Books of account regularly kept in course of business — Corroboration — Evidence Act, 1950, s. 34.

In this case the respondent claimed the sum of $5,283.25 for goods sold and delivered to the appellants. To support its case the respondent produced its books of accounts kept by it to record its transactions with several customers including the appellants. Evidence was given that the goods were ordered and delivered to the appellant's premises and that the entries in the account books were entered from the invoices. The learned trial judge gave judgment for the respondents and the appellants appealed.

Held, dismissing the appeal: (1) the books of account were regularly kept in the cause of business and referred to a matter into which the court had to inquire and were therefore admissible under section 34 of the Evidence Act;

(2) corroboration of the entries in the book of account were to be found in the book of account itself, in the admission by the appellants which tallied with the first four entries relating to them and in the oral evidence relating to the order and the supply of the goods.

Cases referred to:-

(1) *Kesheo Rao* v. *Ganesh* A.I.R. 1926 Nag. 407.

(2) *Deputy Commissioner Barabanki* v. *Munshi Ram Parshad* (1898) 26 I.A. 254.

(3) *Jaswant Singh* v. *Lala Sheo Narain Lal* (1893-94) 21 I.A. 6.

FEDERAL COURT.

Patrick Tan for the appellants.

S. Sahathevan for the respondent.

Cur. Adv. Vult.

Salleh Abas F.J. (delivering the judgment of the Court): This is an appeal against the decision of Mr. Justice Seah who gave judgment in favour of the plaintiff, now the respondent in the present appeal.

The first appellant is the sole proprietor of the second appellant which is a firm carrying on business under the name of Pan Malaysia Construction Company. The appellants obtained a contract from the Federal Government to build a camp for the Police Field Force at 14th Mile Oya Road, Sibu, Sarawak. According to PW1 who was a shareholder and the managing director of the respondent and also in charge of the respondent's account, the first appellant and his clerk ordered goods from the respondent. The goods were delivered to the appellants' worksite at 14th Mile Oya Road in a lorry driven by the respondent's driver. The mandore, presumably a servant of the appellants, who received the goods signed duplicate copies of the invoices accompanying the goods. To support its case the respondent produced exhibits P2(a) and P2(b) which were admitted by the learned judge against the appellants' objection. P2(a) purports to be an account book kept by the respondent to record its transactions with several customers including the appellants. P2(b) is an English translation of entries in P2(a) relating to transactions with the appellants. According to these entries the appellants were indebted to the respondent in a total sum of $5,283.25 for goods sold and delivered.

The 1st appellant in his evidence denied that he or his clerk ever ordered and received the goods to the value in question. According to him, when he or his clerk ordered goods, especially for a big project like the building of the Field Force Camp which cost $4 million, order vouchers would be issued to the supplier. He said he lost copies of these order vouchers when he moved to Johore Bahru and therefore could not produce any of them. He maintained that unless the respondent produced the relevant order vouchers showing that the goods were ordered by him or his clerk, and copies of invoices showing receipt of the goods by them, the appellants are not liable. We will deal with copies of the invoices later in this judgment. As regards order vouchers, whilst PW1 was in the witness box, no question at all was put to him by counsel for the appellants regarding these documents. Whether they were in fact issued or not is in our view of no consequence. Neither side is in a position to produce any of them. Certainly their non-availability is not an evidence to rebut the respondent's case, nor is it a proof that the appellants did not owe the respondent the sum claimed. As order vouchers are not part of the respondent's case, we agree with the observation of the learned judge that the ordering procedure of the appellants is "neither here nor there".

Counsel for the appellants submitted both before the lower court and before us that the respondent's exhibits P2(a) and P2(b) are not admissible as they are not account books within the meaning of section 34 of the Evidence Act and that even if they are admissible they are not sufficient to charge the appellants with liability for the amount. Further, in his evidence, the first appellant maintained that the appellants are not liable unless the respondent produced the duplicate copies of invoices relating to the goods for whose value the appellants were sued. For the purpose of dealing with this submission and contention it is necessary to refer to section 34 of the Evidence Act which is reproduced as follows: —

"Entries in books of accounts regularly kept in the course of business are relevant whenever they refer to a matter into which the court has to inquire, but the entries shall not alone be sufficient evidence to charge any person with liability."

The fundamental principle underlining this section is a compromise between total rejection and partial acceptance of a doctrine that "a man cannot make evidence for himself". This maxim springs from the desire to safeguard the law against false evidence being used, but the safeguard may be too extreme because unless modified it prevents a party from using entries recorded by itself in a subsequent trial. Thus a compromise is reached between the necessity of evidence and circumstantial guarantee of its truthfulness. Such guarantees are reflected in the following two conditions of admissibility enacted in section 34, i.e.

(1) the entries are in a book of account regularly kept in the course of business; and

(2) the entries therein refer to a matter into which the court has to inquire.

In the present appeal the second condition presents no problem. The relevant entries in exhibit P2(a) undoubtedly refer to the transactions between the appellants and the respondent having bearing on the question of the appellants' indebtedness — the very fact in issue before this court and the lower court and into which the courts have to inquire. What is left for us to consider at some length is therefore the first condition, i.e. whether the exhibit P2(a) is "a book of account regularly kept in the course of business" within the meaning of section 34. If so, it is admissible; otherwise it is to be excluded from the evidence and the appeal should be allowed.

The law does not prescribe any special type or form of books of account to be kept by a businessman, nor does it specify any system by which these books are to be kept. Of course it is far more satisfactory if books are kept in a generally recognised form or system showing debts and credits entries between the parties, thus indicating on the face of the account the liability of the party against whom the account is tendered. A book of account kept by an illiterate tradesman is just as admissible as that kept by a highly educated merchant and banker. All that is necessary to show to the court is that the book must be one that is "regularly kept in the course of business". This expression implies some sort of system which is followed in the making of entries in the book in question, although such system need not be elaborate (*Kesheo Rao* v. *Ganesh*[1]). Where there is a system, the fact that entries in the book are not entered hour by hour or day by day as transactions took place does not mean that the book is not "a book of account regularly kept in business" (*Deputy Commissioner Barabanki* v. *Munshi Ram Parshad*[2]). With these guiding principles we now look at the exhibit P2(a) and the oral evidence relating thereto in order to determine whether it is "a book of account regularly kept in the course of business" or not.

The documentary procedure of the respondent's business is well described by PW1 in the following terms. When goods were delivered to a customer, the respondent prepared three copies of invoices from an invoice book. In the evidence the invoices were referred to by the witness as bills. The original top copy was delivered to the customer. The third copy remained in the invoice book which was kept by the respondent. The second copy (referred to by the witness as pink copy because of its colour) accompanied the goods and after having been signed by the person who received the goods was kept by the respondent. When payment for the goods was made, this copy together with the receipt issued therefor would be finally given to the customer. The account book exhibit P2(a) was constructed from copies of those invoices. Every month the respondent entered the following particulars in the book, i.e.

(1) names of the customers,

(2) the dates of transactions,

(3) invoices numbers,

(4) receipt numbers, where payments were made by the customers, and

(5) the amounts sold or purchased.

Exhibit P2(a) contains several pages, of which there are eight pages with these particulars entered. No dates of the transactions were entered in the first two pages whilst the third to the eighth pages contain such dates covering a period between October 1, 1970 and April 2, 1971. The invoices numbers entered in the book, according to PW1, were those of the invoices prepared at the time when the goods were delivered. The receipt numbers were entered only when payments were made by the customers, and these were copied from the receipts issued therefor. In our view, the evidence show sufficient system as to constitute exhibit P2(a) a book of account regularly kept in the course of business.

The respondent could produce neither the pink copies nor the third copies of the invoices. PW1's explanation as to their non-production was fully accepted by the learned judge. PW1 said that the invoices books containing the third copies of the invoices were destroyed after five years in 1975/1976. As regards the relevant pink copies, he said, he gave them to his counsel who after checking and copying down the invoices numbers had returned the copies to him and he too copied down their numbers, but these documents were misplaced and therefore he could not now produce them. The invoices numbers copied by the counsel was admitted as exhibit P1(a) and those copied by PW1 as exhibit P1. They were admitted after counsel for the appellants had withdrawn his objection to their admissibility which he had raised earlier in the course of the trial. The respondent's counsel who copied the invoices numbers and therefore the author of exhibit P1(a) was not called to give evidence. In our view, this document should not have been admitted. However, PW2 who was a senior clerk in the office of Harry Wong & Co. — accountant and auditor — and who prepared the balance sheet and statement of account of the respondent for submission to the Department of Inland Revenue said that in the preparation of the balance sheet and the statement of account of the respondent's business he saw the eight copies of the invoices in question. The statement of account was

admitted as exhibit P3, and the learned judge accepted the evidence of PW2. From these circumstances it would appear that the existence of pink copies of invoices relating to the appellants' transactions was proved beyond doubt. Their non-production in court, in our view, is not a proof that they did not exist, otherwise how one could explain the invoices numbers contained in exhibits P1, P2 and P3? There is no suggestion anywhere that PW1 and PW2 were inventing them.

It is clear from what we have seen of the book exhibit P2(a) and the evidence given relating to the preparation and keeping of the book and the making of entries therein and the explanation on the non-production of the relevant copies of the invoices, that the respondent followed a fairly well recognised system in making these entries although the book is not kept in a professional manner and the system followed was not elaborate. That being the case, we hold that exhibits P2(a) is an account book regularly kept in the course of business, and therefore itself and its translation exhibit P2(b) are admissible. In our view the inability of the respondent to produce the pink copies and other copies of the invoices is not material to the question of admissibility of the account book although it may affect its probative value, to which we now turn our attention.

Under section 34 of the Evidence Act these entries alone shall not be sufficient to charge the appellants with liability for the sum sued. There must be other evidence to corroborate the truthfulness of these entries. Corroboration however may not necessarily always come from extrinsive evidence, as it may intrinsically be proved by the book of account itself, as for example where the books are in correspondence with themselves and entries therein tally with some other external evidence (*Jaswant Singh* v. *Lala Sheo Narain Lal*[3]).

Exhibit P2(a) the account book in the present appeal contains transactions not only between the respondent and the appellants but also other customers. As regards transactions with the appellants, there are twelve entries (see P2(b)). As regards the first four entries, the appellants admitted that they had ordered and paid for the goods. This admission means that the first four entries were correct. Nevertheless, the appellants denied that they had ever ordered goods whose total value is $5,483.25. It appears therefore that this denial was made for no other reason than that the respondent was unable to produce copies of the invoices supporting these entries and the appellants' own order vouchers which, they said, were issued to the respondent. In our view, since the appellants' admission tallies with the first four entries, there is no reason why the other eight entries should not be held to be similarly accurate. It must be observed here that even in respect of the first four entries copies of invoices and the appellants' order vouchers were also not available. Why therefore treat them differently? The fact is that the appellants admitted ordering goods where the entries are in their favour but denied doing so where the entries are adverse to them. Indeed he went further to the extent of challenging the respondent to produce documents which, the judge said, they knew full well are no longer available. Anyone looking at the account book exhibit P2(a) will reach a conclusion that these entries are of such a nature that they must either be taken to be wholly accurate or wholly false. In our view, admission by the appellants which tallies with the first four entries and the existence of many other customers whose names and particulars were entered in the book — these are all circumstances to guarantee the truthfulness of these entries and therefore constitute sufficient corroboration to charge the appellants with liability. The non-production of the invoices and order vouchers are in no way material as to affect the credibility of these entries. There can be no doubt that copies of these invoices at one point of time in the past did exist as they were shown by PW1 to his counsel and seen by PW2 who made use of them in the preparation of exhibit P3 for submission to the Department of Inland Revenue. In any case, it is too far-fetched to hold that the invoices numbers entered in the account book exhibit P2(a) as regards these eight entries were all invented by the respondent. No such suggestion was ever made by the appellants both here and in the court below.

Corroboration of these entries is also to be found in the oral evidence of PW1 himself who said that the goods were ordered by the appellants' clerk and delivered to the appellants' worksite and acknowledged by the mandore who presumably was the servant of the appellants. There was no attempt in the cross-examination of PW1 to rebut this evidence. Thus, finally the respondent's case really rests on PW1's oral testimony, the account book exhibit P2(a) and the admission by the appellants which tallies with the first four entries relating to them. Exhibits P1, P1(a) and P3 are merely showing that the invoices concerned did exist as their numbers contained in these exhibits could not have been forged but copied from the actual copies which are no longer available.

Hence the appeal is dismissed with costs and the deposits should be paid to the respondent on account of costs.

Appeal dismissed.

Solicitors: *Yong & Co.; Battenberg & Talma.*